

EXHIBIT B



Signed and Filed: October 22, 2020

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
)
Reorganized Debtors.) Date: October 13, 2020
) Time: 10:30 a.m.
☐ Affects PG&E Corporation) Hearing held via Zoom
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

MEMORANDUM DECISION DISALLOWING ADMINISTRATIVE EXPENSE CLAIMS

I. INTRODUCTION.

A group of claimants ("the RSA Noteholders") have asserted administrative expense claims arising from the Reorganized Debtors' purported breach of a post-petition restructuring agreement, estimated to be in the aggregate of \$250,000,000, against the Reorganized Debtors. For the reasons explained

1 below, the court will sustain the objections of the Reorganized
2 Debtors and disallow the claims.

3 **II. PARTIES.**

4 Elliott Management Corporation ("Elliott") on its own
5 behalf and on behalf of certain funds and accounts managed,
6 advised, or sub-advised by it, filed the *Motion for (i)*
7 *Allowance and Payment of an Administrative Expense Claim and*
8 *(ii) to the Extent Necessary, Reconsideration and Relief from*
9 *the Confirmation Order Pursuant to Federal Rule of Civil*
10 *Procedure 60(b)* on July 24, 2020 (Dkt. 8536). This motion and
11 request for allowance and payment of an administrative expense
12 is based on a purported breach by Debtors of a post-petition
13 restructuring agreement that they entered with certain
14 noteholders (the "Noteholder RSA"). Elliott was joined by
15 several similarly situated claimants who filed their *Joinder in*
16 *the Pending Elliott Motion and Request for Allowance and Payment*
17 *of Administrative Expense Claim* on August 4, 2020 (Dkt. 8663).¹
18 Pacific Investment Management Company LLC ("PIMCO") joined them
19 and Elliott when it filed its *Joinder of Pacific Investment*
20 *Management Company LLC in the Pending Elliott Motion and Request*
21 *for Allowance and Payment of Administrative Expense Claim* on
22 August 7, 2020 (Dkt. 8704).

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25 ¹ Joining Elliott at that time were: Canyon Capital Advisors LLC, Citadel
26 Advisors LLC, Davidson Kempner Capital Management LP, Farallon Capital
27 Management, L.L.C., Sculptor Master Fund, Ltd., Sculptor Enhanced Master
28 Fund, Ltd., Sculptor Credit Opportunities Master Fund, Ltd., Sculptor GC
Opportunities Master Fund, Ltd., Sculptor SC II, LP, and Värde Partners,
Inc., on behalf of themselves, and/or certain funds and accounts managed,
advised, or sub-advised by them.

1 PG&E Corporation and Pacific Gas and Electric Company
2 ("Reorganized Debtors") filed *Reorganized Debtors' Initial*
3 *Opposition to Elliott Management Corporation's Motion for*
4 *Allowance and Payment of Administrative Expense Claim and*
5 *Reconsideration of Confirmation Order and Related Joinders* as an
6 initial opposition to Elliott's Motion on August 26, 2020 (Dkt.
7 8864). Elliott and the others filed their respective responses:
8 *Elliott Management Corporation's Response to Reorganized*
9 *Debtors' Initial Opposition to Motion for (i) Allowance and*
10 *Payment of an Administrative Expense Claim and (ii) to the*
11 *Extent Necessary, Reconsideration and Relief from the*
12 *Confirmation Order Pursuant to Federal Rule of Civil Procedure*
13 *60(b)* (Dkt. 9032) and *Additional RSA Noteholders' Response to*
14 *Reorganized Debtors' Initial Opposition to Elliott Motion for*
15 *Allowance and Payment of Administrative Expense Claim and*
16 *Reconsideration of Confirmation Order and Related Joinders* (Dkt.
17 9034) on September 14. Reorganized Debtors filed their *Reply in*
18 *Support of Initial Opposition to Elliott Management*
19 *Corporation's Motion for Allowance and Payment of Administrative*
20 *Expense Claim and Reconsideration of Confirmation Order and*
21 *Related Joinders* on September 25, 2020 (Dkt. 9143).

22 The motion came on for hearing on October 13, 2020.
23 Appearances were noted on the record.

24 **III. CRITICAL DATES, PLAN PROVISIONS AND PARAGRAPHS OF THE**
25 **OCP.**

26 On February 5, 2020, the court approved the Noteholder RSA
27 following extensive negotiations among the Reorganized Debtors
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(prior to confirmation of their Plan), certain Shareholders Proponents, and certain holders of funded debt claims.

The court entered its *Order Confirming Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020* (the "OCP") on June 20, 2020, confirming the Debtors' and Shareholders Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020 (the "Plan") (Dkt. 8053). The Plan became effective as of July 1, 2020 (the "Effective Date").

The critical and determinative provisions relevant to this decision are as follows:

Plan, Article 2.1 **Administrative Expense Claims**

Plan, Article 10.8 **Exculpation**

Plan, Article 10.9(b) ***Releases by Holders of Claims and Interest***

OCP, ¶ 54 **Exculpation**

OCP, ¶ 56 **Releases by Holders of Claims and Interest.**

The Noteholder RSA contains a provision ("the best efforts provision") that the RSA Noteholders contend the Reorganized Debtors breached, thus establishing a basis for their administrative expense claims. That is found in Section 3(a)(iv) of the Noteholder RSA and obligates the debtors (prior to confirmation and up to the Effective Date), and their attorneys, advisors, and agents to:

use their best efforts, which shall not require the Debtors to pay any consideration, breach any obligations, or otherwise violate the terms of any Backstop Commitment Letter, to cause various Backstop Parties to transfer (whether by assignment, participation, or otherwise) to

1 Consenting Noteholders that were parties to the
2 AHC Commitment Letter and any Consenting
3 Noteholders that were offered the opportunity to
4 participate in any subsequent commitment in
5 connection with the Alternative Plan, their
6 rights (subject to Section 7 hereof) (including
7 the right to receive fees thereunder) and
8 obligations under applicable Backstop Commitment
9 Letters relating to up to \$2 billion of
10 commitments.

11 **IV. PROCEDURAL STATUS.**

12 On August 11, 2020, the court entered an *Order Regarding*
13 *Scheduling with Respect to Elliott Management Corporation Motion*
14 *for Allowance and Payment of Administrative Expense Claim and*
15 *Related Joinders* (Dkt. 8746). There the court established a
16 procedure to determine whether the Reorganized Debtors could
17 prevail on the face of Elliott's motion, as joined by the
18 others, as a matter of law, avoiding the need for discovery or
19 other unnecessary delay. The Reorganized Debtors' challenge to
20 the administrative expense claims of the RSA Noteholders is a
21 contested matter under Fed. R. Bankr. P. 9014; that rule in turn
22 incorporates relevant provisions of the Federal Rules of Civil
23 Procedure via the Federal Rules of Bankruptcy Procedure.

24 Accordingly, the court treats the matters that were briefed
25 and argued on October 13, 2020 as the functional equivalent of a
26 motion for a judgment on the pleadings, taking all facts as
27 uncontested for these purposes. It determines as a matter of
28 law that the Reorganized Debtors are correct and their
objections should be sustained.

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1 **V. DISCUSSION.**

2 **A. Administrative Expense Claims - Allowed or Disallowed**

3 The RSA Noteholders make much of a statement in Section 2.1
4 of the Plan that no administrative expense claims shall be
5 discharged and contend that their claim for breach of the
6 Noteholder RSA constitutes an administrative expense claim and
7 that Debtors' proposed treatment of the claim conflicts with
8 Articles 10.8 and 10.9 of the Plan and paragraphs 54 and 56 of
9 the OCP.

10 The court disagrees. Article 1.4 preserves expenses of
11 administration that are **allowable**; the corollary is that
12 administrative expense claims that are not allowable will be
13 discharged and, of course, will not be paid. As stated at the
14 outset, the court is disallowing the administrative expense
15 claims of the RSA Noteholders. The concern about discharge is
16 moot and no further action by the court is necessary as to this
17 issue.

18 **B. Negotiation and Pursuit of the Noteholder RSA**

19 In the *Memorandum of Decision - Confirmation of Debtors'*
20 *and Shareholder Proponents' Joint Chapter 11 Plan of*
21 *Reorganization* (Dkt. 8001), the court referred to the recent
22 Ninth Circuit *Blixseth* decision² in support of the proposition
23 that exculpation provisions permit protection of various parties
24 "who participated in the approval process", pointing out that
25 the exculpation provisions of the Plan cover a multitude of
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27 ² Blixseth v. Credit Suisse (*In re Blixseth*), 961 F.3d 1074 (9th Cir.
28 2020).

1 players, a number of documents and a number of events and
2 activities, consistent with the complexity and difficulties of
3 these cases. *Blixseth* itself cited *In re PWS Holding Corp.*, 228
4 F.3d 224 (3d Cir. 2000), for the notion that partial exculpation
5 is the norm for acts committed during the process of developing
6 and confirming a chapter 11 plan. Such provisions do not
7 conflict with 11 U.S.C. § 524(e).

8 For this reason, it is appropriate and consistent with
9 *Blixseth*, to extend exculpation to parties who participated,
10 negotiated and even "pursued" the Noteholder RSA and countless
11 other documents. But once the negotiation was completed, the
12 pursuit was over. Article 10.8 provides the safe harbor for all
13 who accomplished that end, for all who were "involved in the
14 process of developing and confirming [the Plan]". When the
15 Noteholder RSA was approved by the court on February 5, 2020
16 (Dkt. 5637) there was nothing further to negotiate or pursue
17 concerning that document. To use the vernacular, it was a "done
18 deal".

19 The RSA Noteholders are correct that they had the right to
20 contend at a later date that Reorganized Debtors, prior to or
21 concurrent with confirmation of the Plan, breached the best
22 efforts provision, subject to whatever defenses the Reorganized
23 Debtors may assert. Thus, the court concludes that the
24 exculpation provisions of Article 10.8, and the parallel
25 provisions of paragraph 54 of the OCP provide no relief for the
26 Reorganized Debtors.

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1 **C. Releases by Holders of Claims and Interest**

2 In contrast to the narrow exculpation provisions dealing
3 with "negotiation and pursuit" of various documents and
4 including a fairly typical carveout for actual fraud or willful
5 misconduct, the release provisions and the parallel paragraph 56
6 of the OCP are quite a different story. There, there is no
7 carveout for actual fraud or willful misconduct nor any
8 limitation on the extent and breadth of what has been released.
9 The provisions are lengthy, somewhat redundant and very
10 lawyerlike. Below the court highlights certain provisions to
11 emphasize how far reaching they are and how readily they
12 encompass any alleged breach of the best efforts provision:

13 **"Released Parties** [including the Reorganized
14 Debtors] are deemed forever **released** and
15 discharged . . . from any and all claims, interests,
16 obligations, suits, judgments, damages, demands,
17 debts, rights, Causes of Action, losses, remedies,
18 and **liabilities whatsoever** . . . based on or
19 relating to, or in any manner arising from, in **whole**
20 **or in part**, the Debtors', the Fires', the Chapter 11
21 Cases . . . the subject matter of, or the
22 **transactions** or events giving rise to any
23 Claim . . . the business or contractual arrangements
24 between any Debtor and any Released Parties . . .
25 the **Plan Funding**, the Restructuring . . . before or
26 during the Chapter 11 Cases . . . the **Backstop**
27 **Commitment** Letters . . . the **Noteholder RSA** . . .
28 the negotiation, formulation, or preparation
of . . . the Plan and related agreements . . . , and
"other documents (including Plan documents) . . . ,
the **Noteholder RSA**"

25 Based upon these broad provisions the court determines that
26 the RSA Noteholders are bound by the releases they agreed to,
27 thus relieving the Reorganized Debtors of any exposure to claims
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1 by the RSA Noteholders for breach of the Noteholder RSA and in
2 particular the best efforts provisions.

3 **D. Post Effective Date Claims**

4 The RSA Noteholders point to the preamble of Article
5 10.9(b) to maintain that somehow their right to assert the
6 administrative expense claims survives confirmation and the
7 Effective Date, and thus can be asserted, subject to substantive
8 defenses, at this juncture. The court rejects that argument.

9 Article 10.9(b) begins:

10 *"Releases by Holders of Claims and Interests. As*
11 *of and subject to the occurrence of the Effective*
12 *Date, except for the rights that remain in effect*
13 *from and after the Effective Date to enforce the*
Plan"

14 The RSA Noteholders argue that the Reorganized Debtors
15 breached the best efforts provision by not even attempting to
16 have any of the Backstop Commitment parties share with them any
17 of the fees and other entitlements up to \$2 billion of
18 commitments as provided in the portion of the Noteholder RSA
19 quoted above. The best efforts provision was a continuing
20 obligation for the duration of the RSA Support Period, defined
21 as running from the date of execution of the Noteholder RSA
22 through the Effective Date of the Plan. The provisions of
23 Section 3(a)(4) ended on that Effective Date and thus do not
24 come within the phrase "rights that **remain** in effect **from and**
25 **after** the Effective Date." The RSA Noteholders had no right to
26 complain about the Reorganized Debtors' lack of best efforts
27 once the obligations to exercise them ceased. The releases
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1 became effective at the same time that the right to assert best
2 efforts ended. Whether the RSA Noteholders could have asserted
3 some sort of a breach prior to the Effective Date, and prior to
4 the effectiveness of the broad releases, is pure speculation.
5 It did not happen. The after-the-fact assertions of the
6 administrative expense claims were barred as a matter of law by
7 the operation of the releases in Article 10.9(b) and OCP ¶ 56 as
8 of the Effective Date.

9 **E. Other Issues**

10 Because the court is disallowing the RSA Noteholders'
11 administrative expense claims for the reasons stated above, it
12 need not address the alternative theories of waiver or
13 forfeiture asserted by the Reorganized Debtors.

14 RSA Noteholders ask for alternative relief from the OCP.
15 Reorganized Debtors are correct that modification of the Plan
16 could only be attempted in accordance with 11 U.S.C. § 1127(b).
17 And the RSA Noteholders are correct that Fed. R. Bankr. P. 9024,
18 incorporating Fed. R. Civ. P. 60(b), has been a basis for relief
19 from orders confirming plans. On this record, however, nothing
20 justifies granting the extraordinary alternative relief they
21 seek.

22 The record does show that at a lightning fast pace in June,
23 2020, this complicated case proceeded quickly to meet state-
24 imposed deadlines and presented myriad obstacles for all
25 principal players and the court. Given that history, the court
26 believes that Elliott and the other concerned RSA Noteholders
27 could have dealt with procedural difficulties such as the
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1 original confirmation objection deadline or the fact that the
2 confirmation record had been closed by the time of the June 9,
3 2020, Backstop Motion. They could have sought some form of
4 expedited relief before entry of the OCP were they so included.

5 All major players are and were represented by some of the
6 most experienced and qualified bankruptcy counsel in the
7 country, and they know how to act quickly and effectively when
8 they need to. While the court will not engage in a theoretical
9 debate about whether one side waited in the weeds or the other
10 side tried to hide the ball, it will decline to excise its
11 discretion by reconsidering the OCP under Fed. R. Bankr. P. 9024
12 or otherwise.

13 **VI. CONCLUSION.**

14 The court is concurrently issuing orders disallowing the
15 administrative expense claims of Elliott, the Additional RSA
16 Noteholders and PIMCO for the reasons stated in this memorandum
17 decision.

18 *** END OF MEMORANDUM DECISION***
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